

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:

Creation of a Low
Power Radio Service

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MM Docket No. 99-25
FCC 05-75

**SECOND ORDER ON RECONSIDERATION AND
FURTHER NOTICE OF PROPOSED RULEMAKING**

COMMENTS of Kyle E. Magrill

In the above captioned FCC proceeding, the Commission addresses a number of fundamental issues concerning the Low Power FM service (LPFM). These comments will attempt to address some of the Commission's inquiries. It is this commenter's hope that the ideas presented below can be used as a basis for a fair and balanced approach to LPFM, full-powered FM and the FM Translator services, all of which provide valuable services to the public.

Transfer of Control and Assignment of licenses:

In Section IV (a) (16) the Commission asks if LPFM licenses should be transferable, and if so, to whom and on what conditions? Some LPFM advocates contend that selling or even transferring licenses will degrade the LPFM stations by reducing them to mere commodities to be bought and sold as a businesses. This assumption is speculative at best and assumes that LPFM stations will generally command a high enough price on an open market to somehow affect their use as local broadcast outlets. This premise seems to be based on a general fear of the perceived “corporatization” of the commercial broadcast band. Even if we accept the highly arguable premise that corporate holdings of broadcast stations has somehow degraded the industry, there are fundamental differences between LPFMs and commercial stations that make such fears moot. First, there is a national cap of 10 stations making it impossible for any entity to dominate this class of station on a national level. Second, LPFM stations must be owned by not-for-profit entities, so there is little financial incentive for organizations to hold LPFM licenses. Third, owners of LPFMs are barred from owning full-powered stations, so none of the NCE corporate “giants” would be able to own any LPFM station. Fourth, the small coverage area makes it highly *unlikely* that more than a few LPFMs could attract the attention of non-local would-be broadcasters. Fifth, multiple station ownership would allow the rise of small, regional, LPFM station clusters belonging to organizations that have campuses in adjacent cities or counties. This would give them the ability to more fully reach out to their communities or region. Regional or national ownership does not equal bad service. While many communities will benefit from good, locally-owned LPFM stations, many communities would also benefit from a regional or national perspective of organizations that are not able to be full-powered broadcasters. One need only look at the NCE band to realize that it is typically a mix of both

locally-owned stations and national organizations. Both provide valuable services for the listener and the fact that there is no public clamor to ban national entities from owning NCE stations is testament to the fact that the public is being adequately served by the NCE status quo. Why should LPFM owners be singled out among broadcasters as being unable to divest themselves of their stations? Finally, local ownership does not guarantee quality service. Since local groups are sometimes underfunded, especially when compared to national organizations, there will, inevitably be situations where the locally-owned station will be poorly run or simply lack the funding to be fully integrated into the community. Would it be better to have a badly run, locally-owned, station or would it be more desirable to have a well run, community-involved, nationally-owned station in your town? Arguments could be made both ways and there is no clear winner which means that there should be a place on the dial for both local stations and nationally or regionally owned stations.

The rules governing transferability should be brought into line with the rules concerning Full-Powered Non-commercial Educational (NCE) stations. NCE stations are transferable via both assignment of license and changes to the governing board and there is no observable negative effect upon the NCE service or broadcasting in general. Sales of NCE stations are commonplace and are a mechanism for those wishing to broadcast their message, but without broadcast outlets, to enter the arena. Further, the ability to sell a property encourages good stewardship of the property because it can accumulate some value. Stations that are poorly run will often be less valuable than those that are well run. Since LPFM is, in part, a training ground for would-be full powered broadcasters, the ability to sell their property gives them a more realistic experience and could provide the financial opportunity to move up to the next level of radio ownership.

Moreover, there is an additional and direct public benefit from allowing changes in control of LPFM stations. In many cases, LPFM stations are operated by small community groups. It is foreseeable that some groups will run out of resources to support their community's LPFM station and may wish to quit operating the station. Under the current rules, an operating station, providing a valuable service to the community will cease operation for an indefinite period and may, in some cases, never return. Assignment of license to another, qualified, LPFM broadcaster would permit the station to continue its service to the public. Similarly, a significant change in governing board members may result in revitalization of the station thereby allowing the continued operation of the station.

Except for distress situations, LPFM licensees should be required to operate their stations for a minimum of 24 months prior to any transfer or assignment of license in order to prevent trafficking. While this is less time than other owners are required to hold their licenses, LPFM owners are often inexperienced and may need to divest themselves earlier than experienced broadcasters. Any licensee that transfers a license in less than 24 months should not be eligible to own an LPFM for a period of 5 years from the date of the transfer. Those wishing to transfer control prior to 24 months should only be entitled to their actual, documented construction and operating costs.

Any entity that would otherwise be a qualified LPFM applicant should be considered qualified to acquire and operate an LPFM station, including non-stock companies.

Ownership and Eligibility Limitations:

The current rules allow for one owner to possess more than one LPFM station with a national limit of 10 stations. The Commission has struck a reasonable balance between local interests and efficient use of the spectrum. In cases where no local interest is expressed in a channel, it is appropriate that a multiple station owner be allowed to enter an unserved market. It can be argued that giving up channels to national or regional entities could deprive local broadcasters of a community outlet at some future time, but this has to be balanced against the value gained by a community in having a station in the present rather than waiting for a local broadcaster that might never appear. The FM broadcast band is in a constant state of change as stations change various technical aspects of their facilities including, channels, locations and class. This fluid state means that new openings constantly appear and disappear in almost all regions. The variable nature of the band is enough to insure reasonable local opportunities for would-be broadcasters without restricting available channels to local entities. The current rules do not need to be changed as they provide a reasonable balance of service and provide for efficient use of the spectrum, which is in the public's interest, convenience and necessity.

Time Sharing:

The Commission asks if the deadline to submit time sharing proposals should be extended from 30 day to 90 days. This is a reasonable concept and should be permitted.

Construction Period:

The current 18 month time period for construction is too short. The Commission is correct in its belief that the limited resources of LPFM owners may result in difficulty overcoming legal and technical problems encountered during construction. Increasing the period to 36 months puts the LPFM construction window on par with the rest of the radio broadcast community.

Technical Amendments:

The Commission asks if applicants, that file a time share agreement should be allowed to amend their applications to specify a common transmitter site, even if such a site would be outside the 5.6km radius that would have constituted a minor amendment for the individual applicant. Provided that a site is chosen within 5.6km of any one of the applicants' sites, then Section 73.871 should be changed so that all parties to a time share agreement should be allowed to move to that site. For applicants whose proposed facilities are more than 11.2km apart, the Commission should consider case-by-case waivers of Section 73.871 that specify central locations outside the 5.6km radius.

The 5.6km radius for a minor amendment or modification was adopted as part of this proceeding. Although the Commission has not asked for comment on this change, it should be pointed out that, while the 5.6km rule is more generous than the 2km rule that it supersedes, it is far more restrictive than the rules governing similar facilities. For example, Section 73.515 allows full-powered NCE stations to move anywhere provided that their 60dBu signal covers at least 50% of

their community of license. If a NCE station, near the outside limit of coverage, moves in a direct line with their city of license, they can move to a distance of approximately 2x their coverage radius. Another example more similar to LPFM service can be found in Section 74.1233(a)(1) which governs translator movements. A minor change is defined as “*continue to provide 1 mV/m service to some portion of its previously authorized 1 mV/m service area*”. As with the NCE rules, this allows a maximum distance of almost 2x the service radius. Rather than limit LPFMs to their 5.6km service radius, the Commission should consider an additional change to the LPFM rules that would make them consistent with other services by increasing the maximum radius to 11km.

Interference Protection Requirements:

Translators:

The Commission asks if the relationship between LPFM stations and FM translator stations should be re-evaluated. The Commission further notes that some LPFM advocates have requested that LPFM stations be given primary status, thus protecting them from translator encroachment. The Commission states that the LPFM spacing rules employ a three-tiered spacing ring methodology to insure roughly equal treatment between LPFM stations and translators. Paragraph 35 of FCC 05-75 states the opinion that the spacing ring methodology, while more restrictive than the translators' protected vs interfering contour method is beneficial because it simplifies the application process, is less prone to errors and reduces the FCC staff's burden of processing the applications. The problem is that the spacing rules create an asymmetrical situation with respect to translators. Because translators often use highly directional antennas and/or very low power levels, translators can frequently be placed ***much*** closer to an LPFM station than an LPFM station could be placed to a translator. In some cases the translators can move several miles closer to the LPFM than the reverse. This scenario creates an unfair situation where the translator can block an LPFM from moving in its general direction, even though no prohibited overlap would occur. This effectively makes the translator superior to the LPFM because the translator can block the LPFM, but not the reverse. It appears that the current three-tiered spacing system employed by LPFMs to protect translators is inadequate. If the Commission accepts that the situation described above is true and finds it significant, then there are four possible options that I can see:

1. Allow the applicants to employ limited contour based protections with respect to translators. From a spectral perspective, the contour-to-contour approach is the most efficient because it ultimately allows the greatest density. Given that there are practical reasons why the Commission disfavors the general use of this method for the LPFM service, it might still be possible to allow the limited use of contour based protections in order to level the playing field only between LPFMs and translators. In this scenario, LPFMs would still be permitted under the go-no-go procedure afforded by the spacing ring rules. Any station that meets the spacing ring rules would be considered clear-spaced regardless of contour predictions. Stations that failed to meet the spacing requirements could then be permitted to use the contour method. Use of this dual methodology would continue to allow new LPFM stations in the same way as they are now, but would also promote new stations in areas where they would otherwise be blocked by translators. The addition of the contour method would also allow far greater flexibility in relocating existing LPFM stations that are short-spaced to

translators under spacing rules. LPFMs would not be allowed to employ directional antennas, but would be allowed to consider the translator's antenna pattern for the purposes of contour protection. The Commission states that, under Section 74.1203(a), the contour methods employed by translators have a higher risk of stations being forced off the air than spacing based methods. Something like Section 74.1203(a) need not come into play in this case because the use of contours could only be applied toward translators, which must accept interference. Presumably, an LPFM station employing the contour method would also have to accept any interference from the translator as well.

2. LPFMs could be made primary to translators as has been proposed by some LPFM proponents. In this approach, LPFMs would not protect translators, but translators would protect LPFMs. In practice, an LPFM could move as close to a translator as it desired. The affected translator would have to find a way to avoid prohibited overlap or cease operation. The risk in this approach may not become evident until the next LPFM filing window opens. It is possible that many translators, having found an open spot on the dial, will simply be displaced by LPFM applicants who will view the existing translators as easy targets for replacement. Since translators do provide a valuable service to the public, it is probably not in the best interest of the public to create a situation where wholesale numbers of existing translators could simply be wiped out. The possible financial hardship to translator owners could be significant as well. If the nation is to have both services, some better means must be found for the two services to co-exist.
3. Additional spacing rings could be added to the LPFM rules to protect translators with lower power outputs. While this would allow some additional flexibility in locating LPFMs, it does not account for the large number of translators that make use of highly directional antennas and is, therefore, not the best possible solution.
4. Add spacing ring protections for LPFMs to the translator rules. If the Commission ultimately decides that LPFMs cannot use contour predictions to overcome the spacing ring problems, then this approach might prove to be the best and easiest to apply. In this situation, the translators would not be able to use contours with respect to LPFMs, but would simply have the same spacing requirements toward LPFMs that the LPFMs have toward translators. This approach is fair to both services and is easy for the applicants and the Commission's staff to apply. Existing stations could be grandfathered. Short-spaced translator applications should be given an opportunity to change channels, relocate or be dismissed.

Protection to Subsequently Authorized Full Service FM Stations:

The Commission has stated that LPFMs may, generally, continue to operate, provided that they do not cause objectionable interference within a full-powered station's primary service(70dBu) contour. The public interest is well served when full-powered FM stations have proper coverage within their primary service contour. One of the Commission's earliest reasons for existence is to prevent interference between broadcast facilities. It is not fair or reasonable to allow a full-powered FM broadcaster's signal to be degraded within the station's primary service contour. In addition to providing a valuable service to the public, full powered FM stations are required to fully participate in the EAS system. LPFMs are not required to do so. Further, the LPFM stations are likely to be less able to assist the public by disseminating information to a wide area.

Public safety requires that the full-powered stations have an interference free service contour. Instead of allowing an LPFM to cause interference to a full-powered station, the Commission should allow the affected LPFM to request waivers to change channels and/or move beyond the allowed 5.6km radius that constitutes a minor change. If all reasonable efforts to allow the LPFM station to stop interfering should fail, then the LPFM station should be forced to cease operation.

Conclusion:

The LPFM service is still immature, but it is apparent that the public interest is being served by these small stations. While the service is viable under the current rules, there is clearly much that can be done to improve the LPFM service. The Commission's Notice of Proposed Rulemaking shows a good understanding of the objectives and problems facing LPFMs. This is an excellent opportunity to make changes that will benefit broadcasting and the public.

Since the LPFM service is still very young, it would be appropriate for the Commission to review the service on a regular basis until such time as the LPFM service is deemed to be "mature". Five years was appropriate for the first review of the service because there was an initial build-out period where no stations were on the air. Subsequent reviews should be conducted more frequently, perhaps every two to three years, as LPFMs begin to be fully integrated into the fabric of broadcasting.

Respectfully Submitted,

Kyle E. Magrill